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11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 PACIFIC COAST FEDERATION OF  
15 FISHERMEN'S ASSOCIATIONS;  
INSTITUTE FOR FISHERIES RESOURCES;  
16 GOLDEN STATE SALMON  
ASSOCIATION; NATURAL RESOURCES  
17 DEFENSE COUNCIL, INC.; DEFENDERS  
OF WILDLIFE; and BAY.ORG d/b/a THE  
18 BAY INSTITUTE,

19 Plaintiffs,

20 v.

21 WILBUR ROSS, in his official capacity as  
Secretary of Commerce; CHRIS OLIVER, in  
22 his official capacity as Assistant Administrator  
for Fisheries at the National Oceanic and  
23 Atmospheric Administration; NATIONAL  
MARINE FISHERIES SERVICE; DAVID  
24 BERNHARDT, in his official capacity as  
Secretary of the Interior; MARGARET  
25 EVERSON, in her official capacity as Acting  
Director, U.S. Fish and Wildlife Service; and  
26 U.S. FISH AND WILDLIFE SERVICE,

27 Defendants.  
28

Case No. 3:19-cv-07897

**NOTICE OF MOTION AND MOTION OF  
SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY AND WESTLANDS  
WATER DISTRICT TO TRANSFER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: March 26, 2020

Time: 9:30 a.m.

Judge: Hon. Laurel Beeler

Courtroom B, 15th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

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1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on March 26, 2020, at 9:30 a.m., or as soon thereafter  
 3 as counsel may be heard, in the courtroom of the Honorable Laurel Beeler, located in the United  
 4 States District Court for the Northern District of California San Francisco Division, SAN LUIS &  
 5 DELTA-MENDOTA WATER AUTHORITY (“SLDMWA”) and WESTLANDS WATER  
 6 DISTRICT (“Westlands”) (collectively “Water Agencies”), move the Court to transfer this action  
 7 to the Fresno Division of the Eastern District of California.

8 The Water Agencies seek an order transferring this action to the Fresno Division of the  
 9 Eastern District of California, pursuant to 28 U.S.C. section 1404(a), on the ground that transfer  
 10 would serve the interest of justice. This Motion is based on this Notice of Motion, the attached  
 11 Memorandum of Points and Authorities, Federal Defendants’ Motion to Transfer, all of the  
 12 pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial  
 13 notice, and any argument or evidence that may be presented to or considered by the Court prior to  
 14 its ruling.

15 DATED: February 20, 2020

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
 A Professional Corporation

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 18 By: /s/ Daniel J. O’Hanlon  
 Daniel J. O’Hanlon  
 Attorneys for Defendant-Intervenors,  
 San Luis & Delta-Mendota Water Authority and  
 Westlands Water District

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Intervenors San Luis & Delta-Mendota Water Authority (“SLDMWA”) and Westlands Water District (“Westlands”) (collectively “Water Agencies”), hereby join in the Memorandum of Points and Authorities in Support of Federal Defendants’ Motion to Transfer to the Eastern District of California. ECF No. 40. SLDMWA and Westlands submit the following additional points and authorities in support of their motion.

**I. INTRODUCTION**

The issues raised by this action should be heard in the United States District Court for the Eastern District of California (“Eastern District”). Federal Defendants’ motion to transfer explains why venue is appropriate in the Eastern District—where venue is proper, the action might have originally been brought, and where ““transfer will serve the convenience of the parties and witnesses and will promote the interests of justice.”” Federal Defs.’ Mot. to Transfer at 8:21-24, quoting *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1155-56 (N.D. Cal. 2009). But more importantly, in environmental cases like this one, transfer is properly decided by focusing on choice of forum versus the local interest. *Id.* at 8:26-9:4, 13:11-15:12. With this motion, SLDMWA and Westlands respectfully submit additional information regarding (1) the Eastern District’s familiarity with Central Valley Project (“CVP”) operations and (2) the strong local interest of the farms, communities, and wildlife of the Eastern District in this lawsuit.

**II. ARGUMENT**

**A. The Eastern District Has a Unique and Extensive Experience With Issues Related to CVP Operations and ESA Regulation Thereof**

The Eastern District’s judges, research attorneys, clerks, and staff have gained substantial expertise and familiarity with issues related to CVP operations and application of the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., to CVP operations. In their Motion to Transfer, Federal Defendants discuss the Eastern District’s consideration of the 2019 NMFS Biological Opinion in *NRDC v. Bernhardt*, Case No. 1:05-cv-01207-LJO-EPG (E.D. Cal. 2005) (“*Bernhardt*”) and document the Eastern District’s history of deciding CVP biological opinion challenges. Federal Defs.’ Mot. to Transfer at 3:23-8:13, 11:1-13:10. But beyond hearing CVP biological opinion

1 challenges, the Eastern District has been hearing suits involving the CVP, and deliveries to CVP  
 2 water contractors south of the Delta, for decades. *Central Valley Water Agency v. U.S.*, 327 F. Supp.  
 3 2d 1183, 1209 (E.D. Cal. 2004) (“The issues of CVP capacity and water allocation priorities have  
 4 been the subject of over twenty lawsuits in the Eastern District of California, seventeen of which  
 5 have been venued in this court.”); *see e.g., North Coast Rivers Alliance, et al. v. U.S. Dep’t of the*  
 6 *Interior, et al.*, Case No. 1:16-cv-00307-DAD-SKO (E.D. Cal. 2016); *San Luis & Delta-Mendota*  
 7 *Water Auth. et al. v. Jewell et al.*, Case No. 1:15-cv-01290-LJO-EPG (E.D. Cal. 2015); *San Luis &*  
 8 *Delta-Mendota Water Auth. et al. v. U.S. Dep’t of Interior et al.*, Case No. 1:11-cv-00952-LJO-GSA  
 9 (E.D. Cal. 2011).

10       The Northern District recently acknowledged the Eastern District’s extensive experience  
 11 with issues related to CVP operations and ESA consultation in *Bay.org v. Zinke*, Case No. 1:17-cv-  
 12 01176-LJO-EPG (E.D. Cal. 2017) and *Golden Gate Salmon Assoc. v. Ross*, Case No. 1:17-cv-  
 13 01172-LJO-EPG (E.D. Cal. 2017)—cases that challenged biological opinions regarding the  
 14 proposed project to build tunnels under the Delta known as the California WaterFix. In those cases  
 15 Judge Yvonne Gonzalez Rogers of the Northern District ordered briefing on whether the cases  
 16 should be transferred to the Eastern District because “[t]he Court understands that these cases may  
 17 involve significant factual and legal overlap with a case pending in the Eastern District of California,  
 18 [Bernhardt].” Orders Requiring Briefing Re: Potential Transfer to E.D. Cal., *Bay.org v. Zinke*, Case  
 19 No. 4:17-cv-03739-YGR, ECF No. 22 (N.D. Cal. Jul. 31, 2017); *Golden Gate Salmon Assoc. v.*  
 20 *Ross*, Case No. 4:17-cv-03742-YGR, ECF No. 12 (N.D. Cal. Jul. 31, 2017). Following briefing, the  
 21 Court ordered that the cases be transferred to the Eastern District after finding that (1) plaintiffs  
 22 were regional, state-wide, and national organizations that would not be substantially inconvenienced  
 23 by litigating in the Eastern District, (2) there was significant factual and legal overlap with the cases  
 24 immediately before her and *Bernhardt*, pending in the Eastern District, (3) the Eastern District had  
 25 a significant local interest in the cases (most of the project construction, smelt and salmon  
 26 populations and critical habitat, agency witnesses, documents comprising the administrative record  
 27 etc. were all located within the Eastern District), and (4) the Eastern District had significant factual  
 28 and technical knowledge regarding the SWP and CVP and the biological opinions at issue in the

1 cases immediately before her and at issue in *Bernhardt*. Orders Transferring Actions to E.D. Cal.,  
 2 *Bay.org v. Zinke*, Case No. 4:17-cv-03739-YGR, ECF No. 30 (N.D. Cal. Aug. 30, 2017); *Golden*  
 3 *Gate Salmon Assoc. v. Ross*, Case No. 4:17-cv-03742-YGR, ECF No. 23 (N.D. Cal. Aug. 30, 2017).  
 4 This same logic applies here.

5 **B. The Eastern District Has a Significant Local Interest in This Case**

6 The CVP serves much of the Eastern District including lands throughout the Central Valley  
 7 as well as south of the Delta. Accordingly, this lawsuit, which focuses on the relationship between  
 8 CVP operations and endangered and threatened species and their critical habitat, implicates a large  
 9 portion of the Eastern District. *See, e.g.*, Compl. at ¶¶ 5, 57, 58, 69, 73, 84-88, 104, ECF No. 1. As  
 10 shown by the map at page 27 of the Complaint, the CVP spans the entire Central Valley, from  
 11 Redding to Bakersfield. Compl. at p. 27. And, as discussed by Federal Defendants in their motion  
 12 to transfer, the 2019 NMFS and FWS Biological Opinions were developed in agency offices in the  
 13 Eastern District and a majority of the facilities, critical habitat, and anticipated effects associated  
 14 with the proposed project and this lawsuit are located within the Eastern District. Federal Defs.’  
 15 Mot. to Transfer at 13:23-14:5, 14:16-15:7.

16 The Water Agencies reliance on the CVP to support their wildlife, farms, and communities  
 17 proves an additional local interest in this case. The Declaration of Pablo Arroyave (“Arroyave  
 18 Decl.”) and the Declaration of William R. Freeman (“Freeman Decl.”), filed in support of the Water  
 19 Agencies’ motion to intervene, explain the south of Delta CVP contractors’ reliance on CVP water  
 20 for a diverse set of uses including for support of approximately 1.2 million acres of farmland, 2  
 21 million California residents, and millions of waterfowl within Fresno, Kings, Merced, Stanislaus,  
 22 and San Joaquin counties—all of which are in the Eastern District. Arroyave Decl. at ¶ 11, ECF No.  
 23 18. Westlands, a member agency of SLDMWA, serves portions of Fresno and Kings counties, which  
 24 again, are located in the Eastern District. Freeman Decl. at ¶ 2, ECF No. 19. Growers within  
 25 Westlands produce more than sixty high-quality food and fiber crops, and Westlands also delivers  
 26 water for municipal and industrial uses, including for use by disadvantaged communities, and to  
 27 Naval Air Station Lemoore. *Id.*

28 In the prayer of the Complaint, Plaintiffs ask that the 2019 NMFS and FWS Biological



Opinions be set aside, and that the U.S. Bureau of Reclamation be enjoined from relying on them. Compl. at p. 47. Plaintiffs do not specify what changes to CVP operations they believe should be required pending completion of new consultations. But, from the allegations of the Complaint, it is apparent that regardless of whether Plaintiffs have a new plan of CVP operations in mind, or a return to the CVP operations that occurred under the previous biological opinions, if Plaintiffs prevail, the CVP's ability to fulfill the diverse needs of the Eastern District's farms, communities, and wildlife, including protection of the listed species that are the subject of the biological opinions, would likely be further diminished. The adverse impacts of a reduced CVP water supply have significant negative effects including increased land fallowing, increased costs and higher risks for acquiring supplemental water supplies, increased groundwater pumping (with increased overdraft and potential for subsidence, and lower crop yields), increased soil salinity, increased energy use, increased water costs for disadvantaged communities, permanent crop damage, increased unemployment, and reduced air quality. Freeman Decl. at ¶ 8. The changes to CVP operations Plaintiffs may seek as interim relief in lieu of the carefully considered operations analyzed in the 2019 Biological Opinions could well harm the listed fish species in the Eastern District; Plaintiffs have no superior or exclusive claim to scientific knowledge. The threat to agricultural, municipal and industrial, and environmental uses of CVP water, and to the wildlife resources in the Eastern District, thus creates a significant local interest in this lawsuit that weighs in favor of transfer.

### III. CONCLUSION

For the foregoing reasons, SLDMWA and Westlands respectfully request that this Court grant transfer of this action to the Eastern District of California.

DATED: February 20, 2020

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

By: /s/ Daniel J. O'Hanlon

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